

mean time, the estate of the deceased must remain unsettled, in the Orphans Court.

When the order of the 27th of March last was passed, upon the petition of the defendant, special care was taken to guard the complainant against any danger, which might result to him, from the introduction of the new evidence, proposed to be taken, by the proviso, that the new proofs should not delay the hearing of the cause, unless the complainants should ask for delay.

The complainant, however, did not ask for delay, and the cause, after having been depending for nearly eleven years, was, with the consent of both parties, submitted to the court, after an elaborate and able discussion at the bar, by the respective counsel.

The petition, in this case, states very clearly what the new matter is, and in this respect, is entirely free from objection, but it does not state, that by the use of reasonable diligence, the knowledge of the new matter, might not have been acquired, in time to be used when the decree passed. The qualification of the rule, which entitles a party to a bill of review, upon the discovery of new matter, pressing upon the decree, subsequent to the period when it could have been used, that the matter must not only be new, but such as the party could not have known by the use of reasonable diligence, is as firmly settled as the rule itself. This qualification was rigorously applied by Lord Eldon in the case of *Young vs. Keighley*, 16 *Vez.*, 348, though a strong intimation, if not a positive opinion, is expressed by him, that by refusing the application then made for leave to file a bill of review, he was deciding against the justice of that particular case, deeming it better, as he said, that individual injury should be inflicted, than that rules established to prevent general mischief, should be broken down. The same doctrine has been fully sanctioned by Chancellor Kent in *Wiser vs. Blakely*, 2 *Johns. Ch. Rep.*, 480, and in other cases, and stands supported by the high authority of Mr. Justice Story, in the case in 5 *Mason*, before referred to, and in his commentaries on *Equity Pl.*, section 414.